

FILED
IN CLERKS OFFICE
U.S. DISTRICT COURT - N.Y.
★ AUG 12 2008 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

P.M. _____
TIME A.M. _____

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UNITED STATES OF AMERICA,

07 CR 763 (SJ)(SMG)

-against-

**MEMORANDUM
AND ORDER**

MONTY PAYNE,

Defendant.

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A P P E A R A N C E S
UNITED STATES ATTORNEY
Benton J. Campbell
United States Attorney
225 Cadman Plaza East
Brooklyn, New York 11201
By: Nicole M. Argentieri, Esq.
Attorney for Plaintiff

FEDERAL DEFENDERS OF NEW YORK, INC.
16 Court Street – 3rd Floor
Brooklyn, NY 11241
By: Michelle A. Gelernt, Esq.
Attorney for Defendant

JOHNSON, Senior District Judge:

Presently before the Court is a Report and Recommendation (“Report”) issued by United States Magistrate Judge Steven M. Gold on July 2, 2008 regarding Defendant Monty Payne’s (“Defendant”) motion to suppress certain post-arrest statements he allegedly made following an altercation with a fellow inmate at the Metropolitan Detention Center on June 18, 2006. Defendant’s Motion was filed on May 12, 2008 and referred by this Court to Judge Gold on May 14, 2008.

A district court judge may designate a magistrate judge to hear and determine certain motions pending before the Court and to submit to the Court proposed findings of fact and a recommendation as to the disposition of the motion. See 28 U.S.C. § 636(b)(1). Within 10 days of service of the recommendation, any party may file written objections to the magistrate's report. See id. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. See Thomas v. Arn, 474 U.S. 140, 150 (1985).

In addition, failure to file timely objections may waive the right to appeal the magistrate's decision. See 28 U.S.C. § 636(b)(1); Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989). While the level of scrutiny involved in the court's review of the report depends on whether or not objections have been filed, in either case the court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations. See Wood v. Schweiker, 537 F. Supp. 660, 661 (D.S.C. 1982).

In the case at bar, neither party filed any objections to the Report. Upon review of the recommendations, and based on Judge Gold's evaluation of the testimony offered by the government's witnesses at the suppression hearing, this Court agrees that Defendant received properly administered *Miranda* warnings prior to making the statements in question, and that such statements were made

voluntarily. Hence, the Court adopts Judge Gold's Report in its entirety. The motion to suppress is DENIED.

SO ORDERED.

/s/(SJ)

Dated: August 8, 2008
Brooklyn, NY

Senior United States District Judge